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5
6 **UNITED STATES DISTRICT COURT**
FOR THE
7 **DISTRICT OF NEW JERSEY**

8 DENA DESANTIS,

9 Plaintiff

10 v.

11 GEM RECOVERY SYSTEMS,

12 Defendant

)
)
) **Case No.:**
)
)

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

)
) **(Unlawful Debt Collection Practices)**
)

13
14 **COMPLAINT**

15 DENA DESANTIS ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN, P.C.,
16 alleges the following against GEM RECOVERY SYSTEMS ("Defendant"):

17
18 **INTRODUCTION**

19 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
20 U.S.C. § 1692 *et seq.* ("FDCPA").
21

22
23 **JURISDICTION AND VENUE**

24 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
25 that such actions may be brought and heard before "any appropriate United States district court

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original
2 jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendant conducts business and has an office in the State of New Jersey and
4 therefore, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
7

8
9 **PARTIES**

10 6. Plaintiff is a natural person residing in West Paterson, New Jersey, 07424.

11 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

12 8. Defendant is a national debt collection company with corporate headquarters
13 located at 99 Kinderkamack Road, Suite #308, Westwood, New Jersey, 07675.

14 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
15 and repeatedly contacted Plaintiff in an attempt to collect a debt.

16 10. Defendant acted through its agents, employees, officers, members, directors,
17 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.
18

19 **PRELIMINARY STATEMENT**

20 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,
21 which prohibits a catalog of activities in connection with the collection of debts by third parties.
22 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that
23 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,
24 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
25

1 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and
2 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or
3 unconscionable conduct, both generally and in a specific list of disapproved practices.

4 12. In particular, the FDCPA broadly enumerates several practices considered
5 contrary to its stated purpose, and forbids debt collectors from taking such action. The
6 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
7 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
8 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
9 collector may not use any false, deceptive, or misleading representation or means in connection
10 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
11 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
12 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
13 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
14 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
15 connection with the collection of a debt.
16

17 13. In enacting the FDCPA, the United States Congress found that “[t]here is
18 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
19 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
20 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
21 additionally found existing laws and procedures for redressing debt collection injuries to be
22 inadequate to protect consumers. 15 U.S.C. § 1692b.
23

24 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
25 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection

1 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
2 collection practices are not competitively disadvantaged, and to promote consistent State action
3 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
4

5
6 **FACTUAL ALLEGATIONS**

7 15. At all relevant times, Defendant was attempting to collect an alleged consumer
8 debt from Plaintiff on behalf of Northeast Oral Surgery.

9 16. The alleged debt at issue arose out of transactions, which were primarily for
10 personal, family, or household purposes.

11 17. Beginning in or around June of 2010 and continuing until August of 2010,
12 Defendant, its agents, employees, and servants, engaged in debt collection activities seeking
13 payment from Plaintiff.

14 18. Defendant called Plaintiff for the first time in June 2010; Plaintiff advised
15 Defendant’s representative that she disputed the alleged debt.

16 19. In response to Plaintiff’s dispute, Defendant’s representative threatened legal
17 proceedings if Plaintiff did not pay the alleged debt.

18 20. To date, Defendant has not filed a lawsuit or taken other legal action against
19 Plaintiff; based on information and belief Defendant did not intend to take the action threatened.
20

21 21. On July 1, 2010, Defendant sent written correspondence to Plaintiff seeking and
22 demanding payment of \$175.00. A true and correct copy of the July 1, 2010 letter is attached
23 hereto as Exhibit “A”.

24 22. The July 1, 2010 letter was unclear as to who the original creditor or current
25 creditor was, including only that Defendant’s client was “Northeast Oral Surgery.” See Exhibit

1 A.

2 23. The July 1, 2010 correspondence also indicated a "Date of Service" as January
3 14, 2010; however, Plaintiff had never engaged the services of Defendant, leaving this unclear.

4 See Exhibit A.

5 24. The July 1, 2010 letter threatened to "report delinquent account information to
6 Trans Union and Experian Credit Bureaus" indicating that this could "impair [Plaintiff's] credit
7 rating and [her] ability to obtain credit in the future." See Exhibit A.

8 25. By letter dated July 20, 2010, Plaintiff responded by fax and certified mail,
9 disputing the debt; both the facsimile and the certified letter were received by Defendant. A true
10 and correct copy of the July 20, 2010 letter is attached hereto as Exhibit "B".

11 26. On or around August 1, 2010, Defendant sent a second letter to Plaintiff in which
12 is stated: "Our previous attempts to help you resolve this delinquent account have been ignored.
13 We see no reason to avoid paying the full balance on this just account. Delays will not make this
14 matter disappear." A true and correct copy of the August 1, 2010 letter is attached hereto as
15 Exhibit "C".

16 27. Defendant's letter was both false and misleading, as Plaintiff had clearly
17 responded to Defendant's prior correspondence.

18 28. On August 7, 2010, Plaintiff again sent a letter clearly stating that she disputed
19 the debt. A true and correct copy of the August 7, 2010 letter is attached hereto as Exhibit "D".

20 29. Defendant's actions in attempting to collect the alleged debt were harassing,
21 abusive and highly deceptive.

CONSTRUCTION OF APPLICABLE LAW

30. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

31. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

32. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection

1 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
2 collection notices. Clomon, 988 F. 2d at 1318.

3
4 **COUNT I**

5 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

6
7 33. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or
8 more of the following ways:

- 9 a. Defendant violated of the FDCPA generally;
- 10 b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in
11 connection with the collection of an alleged debt;
- 12 c. Defendant violated § 1692e of the FDCPA by using false, deceptive, or
13 misleading representations or means in connection with the collection of a
14 debt;
- 15 d. Defendant violated § 1692e(5) of the FDCPA by threatening to take action
16 that cannot legally be taken or that is not intended to be taken;
- 17 e. Defendant violated § 1692e(10) of the FDCPA by using false representations
18 or deceptive means to collect or attempt to collect a debt;
- 19 f. Defendant violated § 1692f of the FDCPA by using unfair and
20 unconscionable means with Plaintiff to collect or attempt to collect a debt;
- 21 g. Defendant acted in an otherwise deceptive, unfair and unconscionable manner
22 and failed to comply with the FDCPA.
23
24
25

1 WHEREFORE, Plaintiff, DENA DESANTIS, respectfully pray for a judgment as follows:

- 2 a. All actual compensatory damages suffered pursuant to 15 U.S.C. §
3 1692k(a)(1);
- 4 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant
5 to 15 U.S.C. § 1692k(a)(2)(A);
- 6 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
7 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- 8 d. Any other relief deemed appropriate by this Honorable Court.
- 9

10 **DEMAND FOR JURY TRIAL**

11 PLEASE TAKE NOTICE that Plaintiff, DENA DESANTIS, demands a jury trial in this
12 case.

13 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

14 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not
15 subject to any other action pending in any court, arbitration or administrative proceeding.
16

17
18 RESPECTFULLY SUBMITTED,

19 DATED: 04/22/11

KIMMEL & SILVERMAN, P.C..

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